

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

61445

FILE: B-186827

DATE: September 3, 1976

MATTER OF: Sierra Pacific Industries

98077

DIGEST:

Where Forest Service cannot obtain access to haul routes for purchaser under timber sales contract on date specified in contract and use of least expensive alternate haul route will result in increased costs to purchaser, contracts may be modified to reduce advertised and bid rates to amounts agreed to by Forest Service and purchaser, provided that purchaser agrees that such action extinguishes any cause of action it may have as result of its inability to use original haul routes.

The Assistant Secretary of Agriculture requests an advance decision concerning the propriety of modifying two timber sales contracts for the Mill Creek and Res timber sales on the Six Rivers National Forest by lowering advertised and bid rates.

The Forest Service, in advertising and making award of these two timber sales contracts to Sierra Pacific Industries (Sierra-Pacific), contemplated that the timber harvested from the two sales would be hauled over existing roads on the Hoopa Indian Reservation after reconstruction of such roads was completed by the Forest Service. After award the Hoopa Tribal Council decided not to agree to issue a right-of-way permit to the Forest Service. Instead, the Council informed the Forest Service that a toll of \$7-\$8 per thousand board feet would be required for any timber hauled over those routes from the two sales. This action in effect negated the portions of the contract dealing with use of the roads on the Hoopa Indian Reservation.

The Forest Service reports that reconstructing and using alternate haul routes would now appear to be the most advantageous manner to operate the sales; however, significant increases (\$96,139 for the Mill Creek sale and \$137,900 for the Res sale) in hauling and road maintenance costs would result from use of the alternate haul routes.

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Since the Forest Service did not reconstruct the roads on the Hoopa Reservation and make them available for use by Sierra-Pacific on the date specified in the contracts, Sierra-Pacific considers the Forest Service to have breached both contracts.

The Forest Service and Sierra-Pacific apparently can agree on a modification of the contracts by lowering advertised and current contract bid rates to offset Sierra-Pacific's increased costs necessitated by use of the alternate haul routes. However, since this modification would result in a monetary disadvantage to the Government, the Forest Service requests our approval of such modification.

This case is similar to Gerhardt F. Meyne Co. v. United States, 76 F. Supp. 811 (Ct. Cl. 1948), wherein it was held that the Government's representation that specific roads are available carries an implied promise that, if they are not, the Government will stand the resulting increased cost. See also D & L Construction Co. & Associates v. United States, 402 F.2d 990 (Ct. Cl. 1968); Mountain Fir Lumber Co., Inc., B-186534, August 10, 1976.

Accordingly, our Office will not object to modification of the contracts in the amounts agreed to by the Forest Service and Sierra-Pacific, provided that the Forest Service obtain Sierra-Pacific's agreement that such modification will extinguish any cause of action which Sierra-Pacific may have against the Government as a result of the Forest Service's inability to provide access to the original haul routes on the date specified in the contracts.

R. F. Kettner
Acting Comptroller General
of the United States